IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5125 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATSINH GAJUBHA ZALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5125 of 2002

M/S THAKKAR ASSOC. for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/09/2002

ORAL JUDGEMENT

The present petition has been filed by the detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985

(hereinafter referred to as `the Act of 1985') by order dated 18/4/2002 passed by the District Magistrate and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and learned AGP and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the five offences registered against the detenu under Bombay Prohibition Act. The learned advocate for the petitioner has further submitted that while passing the impugned order of detention, the detaining authority has also relied upon statement of four persons recorded under Sec.9(2) of the Act, out of which two statements have been verified by the competent authority and remaining two statements have not been verify by the concerned authority, which shows non-application of mind on the part of the concerned authority. Learned AGP has fairly accepted the same.

4. It appears that the detaining authority has passed the impugned order of detention relying upon five offences registered against the petitioner - detenu and statements of four witnesses, out of which two statements have not been verified by the concerned authority, which shows non-application of mind on the part of the detaining authority which vitiates the impugned order of detention and hence the impugned order of detention is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 18/4/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Bharatsinh Gajubha Zala is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik